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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,121	03/17/2004	Morton Beroza	0082.04	5292

25295 7590 06/28/2005

USDA, ARS, OTT
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BELTSVILLE, MD 20705-5131

EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,121

Applicant(s)

BEROZA, MORTON

Examiner

David J. Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

HC

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 5-10-05 and this action is non-final.

Claim Rejections - 35 USC § 112

2. Claims 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "the atmosphere" in line 13. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 12^{15 and 17}, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,254,948 to Kubalek or U.S. Patent No. 1,056,535 to Grimes et al.

Referring to claims 12, 15 and 17, Kubalek and Grimes et al. disclose a trap device/method for providing uniform emission of a flying insect attractant, consisting of a container – at 10,13,14 of Kubalek or – at 10,14, of Grimes et al., having a top surface, a bottom surface and side walls – see for example figures 1-2 of Kubalek and figure 2 of Grimes et al., having a composition of at least one volatile liquid attractant – at 12,23, of Kubalek and – at 11, of Grimes et al., for targeting at least one flying insect species, and a first opening – proximate 11 of Kubalek and proximate 16 of Grimes et al., in the top of the container – see for example figures 1-2 of Kubalek and figure 2 of Grimes et al., to receive a wick – at 11 of Kubalek and - at 16 of Grimes et al., an adjustable wick – at 11 of Kubalek and – at 16 of Grimes et al., frictionally inserted into the first opening of the container – see for example figures 1-2 of Kubalek and figure 2 of Grimes et al., wherein the wick area exposed to the atmosphere can be increased or decreased over time to maintain maximum attractant emission – see for example figures 1-2 of Kubalek and figure 2 of Grimes et al., and a second opening – at 19 or 20 of Kubalek and – proximate 14a of Grimes et al., in the top of the container, smaller than the first opening and large enough to prevent film closure by a liquid – see for example figures 1-2 of Kubalek and figure 2 of Grimes et al., wherein the second opening maintains air pressure in the container wherein the container emits the at least one volatile attractant for at least about six months without replenishment of the attractant – see for example figures 1-2 page 1 column 2 lines 34-37 of Kubalek and figure 2 of Grimes et al. Further, the Kubalek and Grimes et al.

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references both disclose hanging the device – see at 21-22 of Kubalek and at 13 in figure 1 of Grimes et al.

Claims 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kubalek.

Referring to claims 13 and 16, Kubalek discloses the composition further includes at least one volatile insecticide wherein the at least one volatile insecticide is absorbed by the wick – see for example figure 2 and page 1 column 2 lines 26-37.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grimes et al. as applied to claims 12 and 15 above, and further in view of Kubalek.

Referring to claims 13 and 16, Grimes et al. further discloses a volatile insecticide – see for example page 1 lines 57-72. Grimes et al. does not disclose the wick absorbs the volatile insecticide. Kubalek does disclose the wick – at 11, absorbs the volatile insecticide – see for example figure 2 and page 1 column 2 lines 26-37. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Grimes et al. and add the wick absorbing the volatile insecticide of Kubalek, so as to allow for the volatile insecticide to be inside the container and thus out of reach of a person or pet.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubalek or Grimes et al. as applied to claim 12 above, and further in view of U.S. Patent No. 4,908,977 to Foster. Kubalek and Grimes et al. further disclose the first opening – proximate 11 of Kubalek and – proximate 16 of Grimes et al., being of a size to frictionally hold a wick – at 11 of Kubalek and – at 16 of Grimes et al. – see for example figures 1-2 of Kubalek and figure 2 of Grimes et al., and the second opening – at 19 or 20 of Kubalek and – proximate 14a of Grimes et al., is elongated and narrower than the first opening – see for example figures 1-2 of Kubalek and figure 2 of Grimes et al. Kubalek and Grimes et al. do not disclose the first and second opening form a single opening. Foster does disclose the first opening – at the top of the container – at 1, and the second opening – at any of the openings – at 3 form a single opening – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kubalek or Grimes et al. and add the first and second opening forming a single opening of Foster, so as to allow for the device to allow for the insects to access the volatile insecticide in the container.

Response to Arguments

5. Regarding claim 12, the Kubalek reference US 2254948, applicant argues that the Kubalek reference does not disclose a trap or mass trapping of the insects. As seen in figures 1-2 and page 1 column 2 lines 12-20, the device of Kubalek kills insects and thus traps the insects. Further, Kubalek discloses a volatile insect attractant as seen in page 1 column 2 lines 22-37 which states that a poison may be combined with sugar or molasses and thus the combined

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composition makes a volatile insect attractant liquid. Applicant further argues that the Kubalek reference does not disclose targeting a single insect species. However, as seen in applicant's claims the claim language states that at least one insect species is targeted which is an open ended limitation which implies that more than one insect species can be targeted. Further, the device of the Kubalek reference is capable of adjusting the wick – at 11 as seen in figures 1-2 where the wick is movably connected to the lid of the container – at 14 and the device of Kubalek is capable of emitting the volatile attractant up to at least 6 months as seen in page 1 column 2 lines 34-37. The arguments with respect to the Foster reference US 4908977 under 35 U.S.C. 102 (b) are moot since the Foster reference is no longer used in a 102 (b) rejection.

Regarding claim 14, the motivation to combine the Kubalek reference and the Foster reference US 4908977 is shown above in paragraph 4 of this office action and the motivation to combine these references is found in the generally available knowledge to one of ordinary skill in the art.


Conclusion

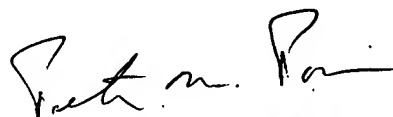
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David Parsley
Patent Examiner
Art Unit 3643


PETER M. POON
SUPERVISORY PATENT EXAMINER

6/21/05